

**TITLE 316 NEBRASKA ADMINISTRATIVE CODE, CHAPTER 36**

**NEBRASKA DEPARTMENT OF REVENUE**

**RULES FOR THE COLLECTION OF DELINQUENT TAXES**

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# **TITLE 316 NEBRASKA ADMINISTRATIVE CODE, CHAPTER 36**

## **NEBRASKA DEPARTMENT OF REVENUE**

### **RULES FOR THE COLLECTION OF DELINQUENT TAXES**

#### **REG-36-001 SCOPE, DUTIES, AND GENERAL PRINCIPLES**

001.01 It is the duty of the Tax Commissioner and the Nebraska Department of Revenue (Department) to execute, administer, and effectively enforce all provisions of the revenue laws of this state.

001.02 These regulations govern collection procedures for the Department arising from and as required under any law administered, enforced, or supervised by the Department or the Tax Commissioner, except where a specific regulation of the Department applies.

001.03 No injunction, writ of mandamus, or other legal or equitable process may be issued in any suit, action, or proceeding in any court against this state to enjoin the collection of any tax required to be collected under any tax program administered by the Tax Commissioner.

001.04 The methods of enforcement and collection provided in the Uniform State Tax Lien Registration and Enforcement Act and Chapter 36 of these regulations, including distraint and sale, are fully independent, so that pursuing any one method is not conditioned upon use of any other method. The use of any one method does not limit the right of the Tax Commissioner to pursue any of the other methods of enforcement or collection.

001.05 **Due Process of Law.** A taxpayer has the right to due process of law in collection matters before the Department. The Department will provide a fair and efficient review and resolution of disputes. When possible, informal meetings with a taxpayer in connection with collection efforts will be held at a time reasonable to the taxpayer during normal business hours of the Department. The taxpayer may employ representation at all stages of a disputed tax matter.

001.06 **Installment Payment of Tax Liabilities.** At the time the first demand for payment is issued, a taxpayer may pay delinquent taxes in installments by executing a payment agreement within the limits established in Reg-36-005, Payment Agreements. Once collection efforts commence, the Department will consider the financial condition of the taxpayer and the ability of the taxpayer to make full payment. If a payment agreement will facilitate collection of the delinquent taxes, the Department will enter into a payment agreement with the taxpayer in accordance with Reg-36-005.

#### **001.07 Fair Collection Process.**

001.07A The Department will attempt other collection actions before seizing a taxpayer's assets. The Department will take steps to assure that every taxpayer is treated consistently

and fairly. The Department will honor exemptions from levy and seizure and provide a process for asserting these claims as provided in Reg-36-010.

001.07B The Department will issue a demand for payment before commencing any collection action, except in the case of jeopardy. The demand for payment will notify the taxpayer of the collection actions that will commence if payment is not made. (Reg-36-006)

001.07C The Department will issue a demand for payment at least ten days before recording a notice of state tax lien, except in the case of jeopardy.

001.07D A taxpayer may demonstrate that recording a notice of state tax lien would be in error within ten days after the postmark date of the demand for payment. (Reg-36-006)

001.07E If, after recording a notice of state tax lien, the Department determines that its actions were in error, it will mail a lien termination within seven business days to the taxpayer and the filing office that recorded the lien. The lien termination will contain a statement that the notice of state tax lien was recorded in error. If the erroneous lien is obstructing a lawful transaction, such as a transfer of real property, the Department will immediately issue a lien termination to the appropriate parties. A copy of the lien termination and an explanation of the error will be transmitted to the major credit reporting companies.

(Sections 77-361, 77-366, 77-2710, 77-27,111, 77-3904, 77-3906, and 77-3908(2) R.R.S. 2009\_\_\_\_.)

## **REG-36-002 DEFINITIONS**

002.01 The definitions in this regulation apply throughout Title 316, Chapter 36.

002.02 Balance due notice means a notice mailed by the Department to the taxpayer stating:

002.02A That the Department, after reviewing a return, has determined that tax, interest, or penalties remain due and owing after all payments and credits have been applied, either as indicated by the taxpayer on the return, or as calculated by the Department; and

002.02B The amount of the tax, interest, or penalties that remain due and owing.

002.03 Bankruptcy petition means a petition filed in the Bankruptcy Court under 11 U.S.C. §§ 301, 302, 303, or 304 commencing a bankruptcy case, whether filed by the taxpayer/debtor or creditors of the taxpayer/debtor.

002.04 Collection action means any action available to the Department to collect delinquent taxes from taxpayers. Collection action includes, but is not limited to: issuing levies; perfecting state tax liens; seizing and selling property; and revoking permits.

002.05 Corporation means any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code.

002.06 Date of assessment, except as provided below, means the date the liability is posted to the books of the Department and a balance due notice is generated.

002.06A Income tax which is shown to be due on an income tax return, including revisions for mathematical errors, is assessed on the date the return is filed.

002.06B Any amended tax return showing an increase of tax is assessed on the date the return is filed.

002.06C If a tax return is properly filed without the correct computation of the tax, or without full payment of the tax due, the tax is assessed on the date when payment is due.

002.06D If an amended tax return or report filed pursuant to Neb. Rev. Stat. § 77-2775 concedes the accuracy of a federal change or correction, or if a state change or correction has become final, any deficiency is assessed on the date of filing of the report or amended return.

002.06E If a notice of proposed deficiency determination is issued, the date of assessment is the date the proposed deficiency determination becomes final.

002.07 Debtor means a person or taxpayer concerning which a bankruptcy petition has been filed.

002.08 Delinquency means any tax, interest, penalties, or costs which are owed and past due, regardless of whether the amount was simply unpaid or issued by the Department as a balance due notice, jeopardy assessment, notice of proposed deficiency determination, or any other assessment.

002.09 Demand for payment means a notice which informs the taxpayer of the final amount due, including interest, penalties, and costs, and the tax programs for which it is due. (Reg-36-004, Demand for Payment)

002.10 Department means the Nebraska Department of Revenue.

002.11 Hearing Officer means the Tax Commissioner, or an individual designated by the Tax Commissioner, to conduct a hearing or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

002.12 Jeopardy means a situation which may require immediate action under Reg-36-003.03.

002.13 Levy means a collection action where the Department executes against the income, cash flow, or property of the taxpayer. Levies may be made against the income or assets of the taxpayer, including, but not limited to: wages; bank accounts; securities; rents owed to; debts owed to; or other property of the taxpayer.

002.14 Notice of proposed deficiency determination means a notice mailed to the taxpayer informing the taxpayer that the Department has examined relevant books and records and determined that returns should have been filed, or that the returns filed, or the remittances made, do not accurately report and pay the correct amount of any tax, interest, or penalty; and that additional tax, interest, or penalty is due.

002.15 Person means bodies politic and corporate, public officials, societies, communities, nonprofit organizations, nonprofit corporations, the public generally, individuals, partnerships, LLCs, joint stock companies, associations, and any other entities and organizations.

002.16 Petition for redetermination means a protest filed with the Tax Commissioner as set out in Reg-33-003, disagreeing with a proposed jeopardy determination or a notice of proposed deficiency determination issued by the Department, which asserts that additional tax, interest, or penalty is due. A petition for redetermination asks that the Tax Commissioner reconsider the notice of proposed determination and begins a contested case for purposes of the Nebraska Administrative Procedures Act.

002.17 Revocation hearing means an action initiated by the Department where a hearing officer requires a taxpayer to appear and show cause why any licenses or permits held by the taxpayer should not be revoked or suspended for failure to comply with any law or regulation governing

the collection of any tax.

002.18 Seizure means a collection action in which the Department levies against the property of the taxpayer for purposes of selling the property to satisfy the tax liability.

002.19 State tax lien means a claim or encumbrance on the real, personal, or intangible property of the taxpayer to enforce the collection of taxes owed the state.

002.20 Tax means any tax, fee, or in-lieu-of-tax contribution which is imposed by the laws of this state and administered or collected and enforced by the Tax Commissioner or Department. Unless the context suggests otherwise, the term “tax” includes interest and penalties that were due or assessed with the tax.

002.21 Tax Commissioner means the chief executive officer of the Department.

002.22 Taxpayer means any person responsible for filing a tax return or paying or remitting any tax.

002.23 Willful failure means a failure which was the result of an intentional, conscious, and voluntary action.

(Sections 77-2709, 77-2710, 77-2776, 77-2785, 77-27,102, and 77-27,111, 77-3901, 77-3902, and 77-3908, R.R.S. 2009, section 77-1783.01, R.S. Supp., 2011, and 11 U.S.C. § 101, 2007.\_\_\_\_\_.)

## **REG-36-003 INITIATING A COLLECTION ACTION**

**003.01 Balance Due Notice.** If a tax return is filed but the correct amount of tax is not paid in full when due, and no payment arrangements were made, the Department will mail a balance due notice. If the taxpayer fails to pay the balance due, or make arrangements to pay the balance due, the Department will mail a written demand for payment to the taxpayer.

**003.02 Notice of Proposed Deficiency Determination.** If the Tax Commissioner finds that a return should have been filed and was not, or that the amount shown as due on a tax return is less than the correct amount, the Department must notify the taxpayer of the amount of the deficiency proposed to be assessed. If a taxpayer fails to file a return, the Department will estimate the amount due, based on the best information available to the Department, and must notify the taxpayer of the amount of deficiency proposed to be assessed. When any notice of proposed deficiency determination becomes final, as determined in Reg-36-004.01 of these regulations, the Department will mail a written demand for payment to the taxpayer.

### **003.03 Jeopardy.**

003.03A A jeopardy action may be initiated if the Tax Commissioner finds that a taxpayer is about to:

003.03A(1) Depart from the state;

003.03A(2) Conceal property or remove property from the state;

003.03A(3) Hide from creditors; or

003.03A(4) Do any other act tending to stop, impede, or delay any collection action for the preceding or current taxable year, unless the proceedings are brought without delay.

003.03B If the Tax Commissioner finds one of the conditions described in 003.03A(1) through 003.03A(4), he or she may declare the taxable period for the taxpayer immediately terminated, and issue a notice of jeopardy determination to the taxpayer stating these findings, together with a demand for immediate payment of any tax due for this period. This may be done whether or not the time otherwise allowed by law for filing returns and paying the tax has expired.

003.03C This tax becomes due and payable immediately.

(Section 77-2709, R.S. Supp. 2011.\_\_\_\_\_.)

## **REG-36-004 DEMAND FOR PAYMENT**

004.01 Collection actions may not commence until a written demand for payment has been mailed by the Department to the taxpayer. Except for jeopardy assessments under Reg-36-003.03, no demand for payment may be issued until a balance due notice is mailed or a notice of proposed deficiency is final. A notice of proposed deficiency determination is final:

004.01A If no petition for redetermination is timely filed by the taxpayer, 60 days after the notice of proposed deficiency determination is mailed by the Tax Commissioner, except;

004.01A(1) A notice of proposed deficiency determination for income tax is final 150 days after the notice is mailed if the taxpayer was outside the United States when the notice was mailed, and

004.01A(2) A notice of jeopardy determination or a notice of proposed deficiency determination for the drug tax is final ten days after the notice is mailed, but collection actions may begin immediately.

004.01A(3) In any collection action brought to enforce payment of taxes made due and payable by a notice of jeopardy determination, the findings of the Tax Commissioner are prima facie evidence of the taxpayer's intent and design.

004.01B If a petition for redetermination is timely filed by the taxpayer, the notice of proposed deficiency determination is final 30 days after the decision of the Tax Commissioner is mailed to the taxpayer unless the decision of the Tax Commissioner is appealed as provided in Reg-33-015.

004.02 **Balance Due Notice.** On or after the date a balance due notice is sent, the Department will mail the taxpayer a demand for payment which notifies the taxpayer that a collection action will be initiated.

004.03 **Notice of Proposed Deficiency Determination.** On or after the date a notice of proposed deficiency determination becomes final, the Department will mail the taxpayer a demand for payment notifying the taxpayer that a collection action will be initiated.

004.04 **Requirements for a Demand for Payment.**

004.04A A demand for payment must identify the taxpayer and the type of ownership interest, if applicable.

004.04B A demand for payment must inform the taxpayer of the total amount due and the tax programs for which it is due. This total includes the amount of tax, penalties, interest, and costs.



004.04C A demand for payment must be served personally or by first class mail addressed to the taxpayer or authorized representative at the last known address of the taxpayer.

004.04D A demand for payment must notify the taxpayer that if payment is not made and the taxpayer makes no arrangements with the Department for payment by the deadline stated in the notice, the Department may commence collection actions.

004.04E A demand for payment must also inform the taxpayer of the options available to the taxpayer that may avoid a collection action, including installment payment agreements.

004.05 If no payment or payment agreement as described in Reg-36-005 has been received by the Department by the due date stated in the demand for payment, the Department may begin collection actions.

(Sections 77-2710, 77-2777, 77-2778, 77-27,102, 77-27,111, 77-27,129, and 77-3908, R.R.S. 2009, section 77-2711, R.S. Supp., 2010, and section 77-2709, R.S. Supp., 2011.\_\_\_\_\_.)

## **REG-36-005 PAYMENT AGREEMENTS**

005.01 When a taxpayer becomes delinquent in paying or remitting taxes, or is unable to pay the liability in full, the Department may enter into a payment agreement with the taxpayer.

005.01A A taxpayer may pay any delinquency over a period of 90 days without a written payment agreement.

005.01B Any arrangement between a taxpayer and the Department to pay a delinquency over more than 90 days must be in writing and must provide for electronic payments, if possible.

005.02 Any payment agreement must require the taxpayer to make timely payments and to timely file all future returns and pay or remit all future taxes.

005.03 Except as provided in 006.03A or 006.03B, a financial statement from the taxpayer may be required for any payment agreement. Information in the financial statement which cannot be verified or seems unreasonable may be adjusted when determining how much the taxpayer will pay.

005.03A If the delinquency is for individual income tax, and the agreement provides for electronic funds transfers that will satisfy the delinquency within 24 months, a financial statement is not required.

005.03B If the delinquency is for any tax program other than individual income tax, and the agreement provides for electronic funds transfers that will satisfy the delinquency within 12 months, a financial statement is not required.

005.04 A signed payment agreement is considered a current demand for payment for the duration of the agreement. If the taxpayer defaults on the payment agreement, the Department may proceed with a collection action without further notification to the taxpayer.

(Section 77-2792, R.R.S. 2009.\_\_\_\_.)

## **REG-36-006 STATE TAX LIENS**

006.01 If any person liable to pay any tax under any tax program administered by the Tax Commissioner neglects or refuses to pay any delinquency after a demand for payment, the amount of the tax, including any interest, penalty, and costs that may accrue, is a lien in favor of the state upon all property and rights to property, then owned by the person or acquired before the expiration of the state tax lien.

006.01A Unless another date is specifically provided by law, the state tax lien arises on the date of assessment and remains in effect:

006.01A(1) For three years after that date if the notice of state tax lien is not recorded with the Secretary of State;

006.01A(2) For ten years after the date the notice of state tax lien or continuation statement is recorded with the Secretary of State;

006.01A(3) Until the amounts have been paid or a judgment against the taxpayer arising out of the liability has been satisfied; or

006.01A(4) Until the state tax lien has expired, unless a continuation statement is recorded prior to the lapse.

006.01B A state tax lien may be continued for additional consecutive ten-year periods.

006.01C A state tax lien expires and becomes unenforceable if the Department does not record the state tax lien or continuation statement within the three or ten-year period.

006.02 The notice of state tax lien may be recorded with the Secretary of State if any of the following conditions exist:

006.02A There is a balance due as a result of non-payment or partial payment, after a demand for payment has been made;

006.02B There is a balance due as a result of a notice of proposed deficiency determination that has become final; or

006.02C There is a balance due as a result of a notice of jeopardy determination, in which case the notice of state tax lien should be recorded at the time the notice of jeopardy determination and demand for payment is mailed or delivered to the taxpayer.

006.03 A notice of state tax lien will not be recorded:

006.03A Before a demand for payment has been issued to the taxpayer.

006.03B While the taxpayer is under the jurisdiction of the Bankruptcy Court, unless relief or permission is granted by the court;

006.03C When the statute of limitations for recording state tax liens has expired;

006.03D When a notice of proposed deficiency determination is still open to protest, unless the proposed deficiency determination was issued as a jeopardy assessment;

006.03E Before a corporate officer or responsible person has been properly notified and the demand for payment has become final; or

006.03F Before a transferee or successor has been properly notified and the assessment has become final.

006.04 The notice of state tax lien recorded with the Secretary of State must include: the names of the taxpayers responsible for the tax; the amount of tax, penalty, interest, and costs through the date of the state tax lien; the tax periods and tax programs involved; and a statement that the state tax lien will become unenforceable by operation of law ten years after the date of recording if no continuation statement is recorded on or before the expiration of the most recent notice of state tax lien or continuation statement. The taxpayers responsible for the tax are:

006.04A For a sole proprietorship, the taxpayer responsible for the tax is the individual who owns the business based on the records of the Department;

006.04B For a corporation, the taxpayer responsible for the tax is the corporation as its name appears in the records of the Secretary of State;

006.04C For a general partnership, the taxpayers responsible for the tax are all the partners as jointly and severally liable, and if there is property held in the partnership name, the partnership;

006.04D For a limited partnership, the taxpayers responsible for the tax are all the general partners as jointly and severally liable, and if there is property held in the partnership name, the partnership; or

006.04E For a limited liability company (LLC), Subchapter S corporation, cooperative, joint venture, or any other entity, the taxpayer responsible for the tax is the business as its name appears in the records of the Secretary of State.

#### **006.05 The Priority of a State Tax Lien.**

006.05A With regard to the Internal Revenue Service, the priority of a state tax lien is determined from the date of assessment.

006.05B With regard to all other creditors, the priority of a state tax lien is determined when the notice of state tax lien was recorded with the Secretary of State or, in the case

of real property, the date the notice of state tax lien was recorded with the register of deeds of the appropriate county.

006.05C Unless otherwise provided by law, a state tax lien is valid against any purchaser, successor to business property, holder of a security interest, holder of a mechanic's lien, or judgment lien creditor as of the date the notice of state tax lien is recorded with the Secretary of State, or in the case of real property, the register of deeds of the appropriate county.

006.05D The state tax lien is valid against any subsequent creditor, but is subject to a prior lien.

006.05E In the case of a prior mortgage on real property, or a secured transaction covering personal property written to secure a present debt and future advances, the state tax lien is subject to the prior lien unless the Tax Commissioner has notified the lienholder in writing of the recording of the state tax lien. In this case, any subsequent indebtedness created under the mortgage or secured transaction is junior to the state tax lien.

**006.06 Termination of State Tax Liens.** A state tax lien will be terminated by the Department if the delinquency is paid, abated, adjusted, or reduced to less than \$50. The Department must record a termination statement upon the termination of any state tax lien.

006.07 A state tax lien may be released in whole or in part with respect to particular persons or property by the Department if:

006.07A The tax amount and any interest, penalties, and costs have been secured sufficiently by a lien on other property;

006.07B A surety bond or other satisfactory security has been posted, deposited, or pledged with the Tax Commissioner in an amount sufficient to secure the payment of the taxes and any interest, penalties, and costs; or

006.07C The release, or partial release of the state tax lien, will not jeopardize the collection of the taxes and any interest, penalties, and costs.

006.07D The Department must record a release statement upon the release, in whole or in part, of any state tax lien.

006.08 A state tax lien may be subordinated to other liens and encumbrances by the Department if subordination of the state tax lien will not jeopardize the collection of the taxes and any interest, penalties, and costs. To subordinate a state tax lien, the Department must record a subordination statement with the Secretary of State.

006.09 A taxpayer may request in writing, a determination that a state tax lien is not valid against the taxpayer's interest in property within ten days after the demand for payment notifying the taxpayer that a notice of state tax lien may be filed is served on the taxpayer.

006.09A The Department must respond to the taxpayer's request in writing within ten days of receipt of the request, and mail its response by first class mail.

006.09B The taxpayer may petition the Department for a redetermination within 30 days after receipt of the Department's response. The petition will be considered by the Department as a contested case under the Practice and Procedure Regulations, Chapter 33 of this Title. The filing of a petition for redetermination does not terminate, release, or otherwise impede the state tax lien.

(Sections 77-27,103 and 77-3904, R.R.S. 2009.\_\_\_\_.)

## **REG-36-007 JUDICIAL ENFORCEMENT OF STATE TAX LIENS**

007.01 At any time within three years after any amount of tax to be collected is assessed, or within ten years after the last recording of the state tax lien or continuation statement, the Tax Commissioner may bring an action in the District Court of Lancaster County, or in the courts of any other state, or the United States, in the name of the people of the State of Nebraska to collect the delinquent amount together with interest, penalties, and costs.

007.02 The Attorney General will prosecute the action on behalf of the Tax Commissioner.

007.03 The rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

007.04 In the action, a writ of attachment may be issued, and no bond or affidavit is required before issuing the attachment.

007.05 In the action, a certificate by the Tax Commissioner showing the delinquency is prima facie evidence:

007.05A That the taxpayer is liable for the tax, interest, penalties, and costs;

007.05B Of the amount of tax, interest, penalties, and costs;

007.05C That the amount of tax, interest, penalties, and costs are delinquent; and

007.05D That the Tax Commissioner has complied with all provisions of the applicable tax programs.

(Sections 77-2713(6), 77-27,109(2), and 77-3905, R.R.S. 2009.\_\_\_\_.)

## **REG-36-008 LEVY ON AN EMPLOYER OR FINANCIAL INSTITUTION**

008.01 The Department may issue a notice of levy if a taxpayer is delinquent in the payment of any Nebraska taxes, the taxpayer has not shown satisfactory cooperation regarding delinquent taxes, and a demand for payment has been sent for the total amount owing within the last 60 days.

008.01A Notices of levy may be issued without recording a notice of state tax lien.

008.01B If the notice of levy is on wages, and the balance will be resolved through levy payments prior to the expiration of the statutory lien, it is not necessary to record the notice of state tax lien. If a wage levy will extend beyond the expiration of the statutory lien, the notice of state tax lien must be recorded with the Secretary of State.

008.01C A notice of levy must be served personally or by first class mail to the payor, bank, or other financial institution in control of wages or assets of the taxpayer.

008.01D The payor, bank, or other financial institution must respond to the notice of levy within ten days after receipt of the notice by either complying with the levy or requesting a determination that the levy is not valid against the interest of the payor, bank, or financial institution as provided in Reg-36-008.06.

008.02 A notice of levy served on a payor is effective upon all wages, salaries, or other income that is in the control of the payor, and that is not exempt, until the amount of tax, interest, penalties, and costs are satisfied or the levy is released. (Reg-36-010, Exemptions from Levies). The Department may approve a reduction in the amount of wages, salaries, or other income that is subject to levy.

008.02A The Department will comply with Internal Revenue Service Publication 1494 in determining the amount of wages that will be subject to the levy.

008.02B If the taxpayer is an employee of the payor, and ceases to be employed by the payor before the entire amount of tax, interest, penalties, and costs are satisfied, the employer must immediately notify the Tax Commissioner in writing of the termination date of the employee and the total amount withheld from the taxpayer. No employer may discharge the employee solely because the Department has issued the initial notice of levy.

008.02C The Tax Commissioner must refund any amounts withheld from the taxpayer and paid over to the Department that are in excess of the tax, interest, penalties, and costs.

008.02D The notice of levy is continuing and will be released only when:

008.02 D(1) The amount of the levy is paid in full;



008.02 D(2) The levy is voluntarily released by the Department; or

008.02 D(3) The taxpayer comes under the protection of the U.S. Bankruptcy Court.

008.03 A notice of levy served on a bank or other financial institution is effective only for the amount stated in the levy and to the extent of funds under the control of the bank or other financial institution at the time of the service of the notice of levy. Funds subject to the notice of levy include, but are not limited to, funds in checking accounts, savings accounts, certificates of deposit, individual retirement accounts, and club savings plans. Additional levies may be served at different intervals to seize additional real, personal, or intangible property or rights to real, personal, or intangible property (property).

008.04 **Effect of Honoring a Notice of Levy.** Any person in possession of assets who has been served a notice of levy and who surrenders the property pursuant to the notice of levy, is discharged from any liability to the taxpayer with respect to the property surrendered or paid.

008.05 **Effect of Refusing to Honor a Notice of Levy.** Any employer, bank, or other financial institution who is served a notice of levy, and who fails or refuses to honor the levy without cause, may be held liable for the amount of the levy up to the value of the property of the taxpayer under its control at the time the notice of levy was served or, if it is a continuing levy, assets that come into its possession at any time thereafter until the notice of levy is released. The employer, bank, or other financial institution is subject to the same collection provisions as set forth in Chapter 36 of these regulations.

008.06 A taxpayer, employer, bank, or other financial institution may request in writing, a determination that a notice of levy is not valid against his or her interest in the property within ten days after service of the notice of levy. The Department must respond to the taxpayer's request in writing within ten days of receipt of the request, and mail its response by first class mail.

(Section 25-1558, R.R.S. 2008, and section 77-3906, R.R.S. 2009.\_\_\_\_\_.)

## **REG-36-009 SEIZURE AND SALE OF PROPERTY**

009.01 The Department may seize and sell real, personal, or intangible property, or rights to real personal, or intangible property (property) of a taxpayer when: the taxpayer is delinquent in the payment of any Nebraska taxes; the taxpayer has not shown satisfactory cooperation regarding delinquent taxes; and a demand for payment has been sent for the total amount owing within the last 60 days.

009.01A The Tax Commissioner, or an authorized employee, may levy, or by warrant issued under his or her hand, authorize a sheriff or duly authorized employee of the Tax Commissioner to levy upon, seize, and sell property belonging to the taxpayer, that is not exempt, to the extent necessary to satisfy the liability for the payment of the amount due (Reg-36-010, Exemptions from Levies).

009.01B Before a writ of seizure is issued, the Department must identify the property to be seized, verify the nature and extent that the title to the property rests with the taxpayer, and identify all other known lienholders on the property.

009.01C If the writ of seizure is to be executed by the county sheriff, the Department must first record the state tax lien in the office of the Secretary of State or the appropriate county and pay the costs of the county sheriff.

009.02 The taxpayer must be served a copy of the writ of seizure either in person at the time the writ is executed or by first class mail.

009.03 A writ of seizure is valid for 60 days after it is issued by the Department. The writ is deemed issued when signed by an officer of the Department.

009.04 Any person whose property has been seized has the right to pay the amount due, together with the expenses of the proceeding, if any, to the Department, or reach a payment agreement with the Department at any time before the sale of the property. Upon payment or acceptance of a payment agreement, the Department must restore the property to the person, and all further proceedings in connection with the levy on the property must cease from the time of payment or acceptance of a payment agreement. If the property is in the possession of the county sheriff, the taxpayer must pay the taxes, interest, and penalties, plus costs directly to the sheriff.

009.05 **Effect of Honoring a Seizure.** Any person in possession of property who has been served a writ of seizure and who surrenders the property pursuant to the writ of seizure is discharged from any liability to the taxpayer with respect to the ownership or possession of property surrendered or paid over.

009.06 **Effect of Refusing to Honor a Seizure.** Any person in possession of property who has been served a writ of seizure and who fails or refuses to honor the writ of seizure without cause, may be held liable for the amount of the writ of seizure up to the value of the property of the taxpayer under his or her control at the time the writ of seizure was served. The person who fails

or refuses to honor the writ may be subjected to the same collection provisions as set forth in Chapter 36 of these regulations.

**009.07 Property Seized by the County Sheriff.** Any property that is seized by the county sheriff will be sold by the county sheriff at public auction under the authority of Chapter 25, Article 15 of the Nebraska Revised Statutes.

**009.08** Any property seized by the Department will be sold under the authority of Neb. Rev. Stat. § 77-3906 as follows:

009.08A Seized property will be secured as safely as possible before sale for at least 20 days to give the taxpayer or any other persons known to have an interest in the property the opportunity to contest the seizure or claim an exemption.

009.08B A minimum of 20 days prior to the date of the sale, the taxpayer and any other persons with an interest in the property must be notified by certified mail, return receipt requested of the date, time, and place of the sale. The notice must specify the amount due and contain:

009.08B(1) In the case of real property, or rights to real property, a legal description of the property seized; or

009.08B(2) In the case of all other property, or rights to property, an account of the property seized.

009.08C In addition to personal notification of the taxpayer and other persons with an interest in the property, the Department must publish a notice in a newspaper of general circulation in the county where the sale is to be held at least once per week for four successive weeks. If there is no newspaper of general circulation, a notice must be posted in three public places within the county. For purposes of this requirement, the Department's website is a public place for posting the notice.

009.08D The notice must contain:

009.08D(1) A description of the property to be sold;

009.08D(2) A statement of the type of tax due and the amount, including interest, penalties, and costs;

009.08D(3) The name of the delinquent taxpayer; and

009.08D(4) A statement that unless the amount due, including interest, penalties, and costs, is paid on or before the time fixed in the notice for the sale; or security in an amount determined by the Tax Commissioner is placed with the Tax Commissioner, or his or her authorized representative, on or before that time, the

property, or so much of it as is necessary, will be sold in accordance with law and the notice.

009.08E At the sale, the Department will sell the property at public auction to the highest bidder or sell it under sealed bids in accordance with law. If several items of property were seized, the items may be offered separately, in groups, or in the aggregate, and may be sold using whichever method produces the highest aggregate amount. Payment for the property must be tendered in certified funds or cash on the day of the sale. If the buyer cannot tender certified funds or cash, the Department will immediately proceed to sell the property again in the same manner.

009.08F After the sale, the Department must issue a bill of sale or deed to the buyer. The bill of sale or deed vests the interest or title to the property in the purchaser. If the property is real estate, the purchaser must record the deed in the appropriate county. The unsold portion of any property seized remains in the custody and control of the Tax Commissioner until offered for sale again under this section or redeemed by the taxpayer.

009.09 If the property seized and sold under this section is not sufficient to satisfy the demand for payment for which the seizure was made, the sheriff or an authorized employee may thereafter, and as often as necessary, seize and sell any other property of the taxpayer that is available for seizure until the amount due from the taxpayer, together with all expenses, is fully paid.

009.10 If any other person having an interest or lien upon the property files a notice of his or her interest or lien with the Tax Commissioner before the sale, the Tax Commissioner must withhold any excess pending a determination of the rights of the respective parties by a court of competent jurisdiction. If, for any reason, the taxpayer is not available, the Tax Commissioner must deposit the excess money with the State Treasurer, as trustee for the taxpayer or his or her heirs, successors, or assigns. If the money received from the sale exceeds the total of all amounts due, together with all expenses, and if there is no other interest in or lien upon the money received, the Tax Commissioner must return the excess to the taxpayer and obtain a receipt. Any interest earned will not be paid to the taxpayer.

009.11 All employees and officers of companies must open all books containing evidence or statements relating to the property eligible for seizure, on demand of a sheriff or an authorized employee about to seize, or having seized, any property.

009.12 Property seized by the Department may be returned to the taxpayer when:

009.12A The amounts due, together with all expenses are paid in full or a payment agreement is reached with the Department;

009.12B Return of the property will facilitate collection of the tax liability;

009.12C The taxpayer deposits security with the Tax Commissioner in the form prescribed in Reg-36-012.05 and in an amount equal to the tax liability, and any interest, penalties, and costs; or

009.12D The Tax Commissioner determines that the seizure was improper or unnecessary.

009.13 A taxpayer or any other person with an interest in the property seized by the Department may request in writing that the Department determine that a seizure of property was invalid within ten days after service of the writ of seizure. The Department must respond to the taxpayer's request in writing within ten days of receipt of the request, and mail its response to the requesting taxpayer or other person with an interest in the property by first class mail.

(Sections 77-3906 and 77-3908, R.R.S. 2009.\_\_\_\_\_.)

## **REG-36-010 EXEMPTIONS FROM LEVIES**

010.01 The Department may not levy against or seize the exempt property or income of a taxpayer. The Department may levy against or seize non-exempt property or income of a taxpayer for any amount which is over and above the exempt amounts, if any.

010.02 **Exemptions from Levy or Seizure.** The following property or dollar amounts are exempt from levy and seizure as provided by the law of this state:

010.02A Any federal or state earned income tax credit refund;

010.02B The immediate personal possessions of the taxpayer and his or her family;

010.02C All necessary clothing of the taxpayer and his or her family;

010.02D The taxpayer's interest, up to an aggregate fair market value of \$1,500, in household furnishings, household goods, household computers, household appliances, books, or musical instruments which are held primarily for personal, family, or household use of the taxpayer and any dependents;

010.02E The taxpayer's interest, up to an aggregate fair market value of \$2,400, in implements, tools, or professional books or supplies held for use in the principal trade or business of the taxpayer and any dependents. This may include one motor vehicle used by the taxpayer in connection with his or her principal trade or business or to commute to and from his or her principal place of trade or business;

010.02F The taxpayer's interest in any professionally prescribed health aids for the taxpayer and any dependents;

010.02G Up to \$2,500 in personal property in addition to property exempted under Reg-36-010.02A through Reg-36-010.02F;

010.02H A homestead as defined in Neb. Rev. Stat. § 40-101, not exceeding \$60,000; and

010.02I Any other payment or property that is exempt from levy or execution to satisfy a state tax lien under state or federal law.

010.03 **Stock bonus, pension, profit-sharing, or similar plan.** Any interest held under a stock bonus, pension, profit-sharing, or similar plan or contract payable on account of illness, disability, death, age, or length of service, to the extent necessary for the support of the taxpayer and any dependents, is exempt from levy or execution unless:

010.03A Within two years prior to bankruptcy, or entry against the taxpayer of a money judgment which becomes final, the plan or contract was established or was amended to

increase contributions by or under the auspices of the taxpayer or of an insider that employed the taxpayer at the time the taxpayer's rights under the plan or contract arose; or

010.03B The plan or contract does not qualify under §§ 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code.

**010.04 Compensation for personal injuries or death.** All proceeds and benefits, including interest earned, paid either as a lump sum or as periodic payments, which are made as compensation for personal injuries or death, are exempt from levy unless there is a written assignment allowing a levy.

**010.05 Claiming an exemption.** To claim an exemption from levy or seizure, the taxpayer must file a list of all of the sources of income received, or property owned by the taxpayer, with the Department in writing within ten days of the notice of levy or writ of seizure, showing which items or amounts of income or property he or she claims to be exempt from execution pursuant to this regulation, along with a value for each item of property listed. The Department must respond to the taxpayer's request in writing within ten days of receipt of the request, and mail its response by first class mail.

(Sections 25-1552 through 25-1559, 25-1563.01, 25-1563.02, and 40-101 R.R.S. 2008, and section 77-3906, R.R.S. 2009.\_\_\_\_\_.)

## **REG-36-011 REVOCATION OR SUSPENSION OF A TAX LICENSE OR PERMIT**

011.01 The Tax Commissioner may set a hearing requiring the taxpayer to show cause why his or her licenses or permits should not be revoked or suspended whenever the holder of a license or permit:

011.01A Fails to comply with any provision of the Nebraska Revenue Act, another tax statute, or with any rule or regulation of the Tax Commissioner relating to a tax;

011.01B Fails to maintain or provide the Department with any books, records, documents, or other items required by law, rule, or regulation; or

011.01C Misrepresents, or fails to disclose, a material fact to the Department.

011.02 The Department may request that the hearing officer set a hearing to show cause why the taxpayer's licenses, or permits should not be revoked or suspended.

011.02A An affidavit listing the violations giving rise to the request for a revocation hearing must be attached to the request for a revocation hearing.

011.02B The request for a revocation hearing and the supporting affidavit must be sent to the hearing officer and must also be mailed to the taxpayer at his or her business address by first class mail.

(Sections 77-2705 and 77-2710, R.R.S. 2009.\_\_\_\_.)



## **REG-36-012 SECURITY FOR PAYMENT AND COLLECTION OF TAX**

012.01 The Tax Commissioner may require any taxpayer to file a bond or other security (security), to ensure payment and collection of any tax, in an amount that the Tax Commissioner prescribes and as provided by 012.03.

012.02 Security may be required in the following circumstances.

012.02A Existing Permitholders. Existing permitholders may be required to post security in the following circumstances:

012.02A(1) If the taxpayer files returns on an annual basis and has had one or more delinquencies in remitting tax or filing timely returns during the last 24 months;

012.02A(2) If the taxpayer files returns on a quarterly basis and has had two or more delinquencies in remitting tax or filing timely returns during the last 24 months; or

012.02A(3) If the taxpayer files returns on a monthly or more frequent basis and has had four or more delinquencies in remitting tax or filing timely deposits or returns during the last 24 months.

012.02B Applicants for New Permits. Applicants for new permits may be required to post security in the following circumstances:

012.02B(1) When the applicant has previously held a tax permit and met one of the conditions of 012.02A(1) through 012.02A(3) at that time;

012.02B(2) When the applicant previously held a sales tax permit that was revoked;

012.02B(3) When the business location was previously used for a similar business or businesses that met one of the conditions of 012.02A(1) through 012.02A(3) at that time; or

012.02B(4) When an investigation of the applicant's financial status by the Department shows that the applicant will likely be unable to timely remit the tax.

012.03 Security may be posted by the taxpayer to release a state tax lien, or secure the return of property seized from the taxpayer.

012.04 **Amount of Security.** If one of the conditions in 012.02A or 012.02B is met, or if the taxpayer chooses to post security to avoid a collection action, the Tax Commissioner may require up to three times the average reporting period liability on any permit.

012.04A If the permitholder has been habitually delinquent, the Tax Commissioner may require up to five times the average reporting period liability. A permitholder will be considered habitually delinquent if the permitholder is delinquent for three or more months or has previously had a permit revoked for nonpayment of taxes.

012.04B A specific amount of security may be required in an order for continuance issued following the scheduling of a revocation hearing, or may be an amount reasonably determined by the Department.

012.05 **Length of Time of Security.** If security is required, it may be held for three years after the security is posted, if there are no violations. It may be held for a reasonable time after termination of a permit to allow for an audit or examination of the taxpayer's records.

012.06 **Forms of Acceptable Security.** The following may be posted as security:

012.06A Nebraska state tax bond, underwritten by a surety company licensed to transact business in this state by the Nebraska Department of Insurance;

012.06B Certificate of deposit, issued by a federally insured Nebraska financial institution;

012.06C Passbook savings account, issued by a federally insured Nebraska financial institution;

012.06D Irrevocable letter of credit issued by a federally insured Nebraska financial institution;

012.06E Cash, cashier's checks, money orders, or certified checks, if they will be held for less than 60 days. Any of these forms of security which are held, or expected to be held, longer than 60 days should be converted to a passbook or certificate of deposit;

012.06F Any other security must be approved by the Department in writing.

012.07 **Form of Ownership.** Certificates of deposit or passbook savings accounts must be held in the Department's name. If any changes are made to the security, the form of ownership must be updated.

012.07A The financial institution must be provided the taxpayer's federal identification number or Social Security number for interest reporting purposes.

012.07B All withdrawals from any form of security must be made in the form of a bank draft or cashier's check.

012.08 To enforce collection of any tax, interest, penalties, and costs not paid when due, the Tax Commissioner may make demand upon any security which has been submitted to the Tax

Commissioner on behalf of the taxpayer. If necessary, the security may be sold by the Tax Commissioner in the manner provided by Neb. Rev. Stat. § 77-27,131.

(Sections 77-2710, 77-27,131, and 77-3907, R.R.S. 2009.\_\_\_\_.)

## **REG-36-013 CORPORATE OFFICER LIABILITY**

013.01 Any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation, or with the authority to decide whether the corporation will pay taxes imposed upon a corporation, is personally liable for the payment of the taxes in the event of willful failure on his or her part to have a corporation perform this act.

013.01A Officers or employees with the duty to collect, account for, or pay over any taxes include, but are not limited to those:

013.01A(1) Designated as officers of the corporation in the records of the Secretary of State;

013.01A(2) With the ability to write checks on corporate accounts or otherwise disburse corporate funds;

013.01A(3) Filing and signing tax returns and other Department forms;

013.01A(4) With the ability to hire and fire employees;

013.01A(5) In charge of the financial affairs of the corporation;

013.01A(6) With access to the books and records of the corporation; and

013.01A(7) With significant ownership of the company.

013.01B Willful failure means a failure that is the result of an intentional, conscious, and voluntary action. Evidence of willfulness includes, but is not limited to, a showing that while taxes were due and owing, the corporate officer or employee knew, or should have known, that taxes were due and owing and:

013.01B(1) Paid other creditors or corporate obligations;

013.01B(2) Directed that other creditors or corporate obligations be paid; or

013.01B(3) Failed to pay or direct payment of taxes when corporate funds were available.

### **013.02 Issuance of the Notice of Proposed Deficiency Determination and Demand for Payment.**

013.02A If the Department has not issued a notice of proposed deficiency determination to the corporation, the statutes which govern when a notice of proposed deficiency determination must be issued to the corporation also apply to issuing a notice and demand for payment to a corporate officer or employee.

013.02B If a notice of proposed deficiency determination has been issued to the corporation, the notice and demand for payment must be issued to a corporate officer or employee within three years after the date the assessment to the corporation became final.

013.02C If a corporation defaults on a payment plan, the notice and demand for payment must be issued to a corporate officer or employee within three years after the date that the liability which is the subject of the payment plan became final, due, and owing.

013.02D If the corporation appeared as a debtor or debtor in possession in a bankruptcy, the notice and demand for payment must be issued to the corporate officer or employee within three years of the date the assessment to the corporation became final, or one year after the closure or dismissal of the bankruptcy case, whichever is later.

013.03 Within 60 days after the day the notice and demand for payment were issued for the payment of any taxes, any officer or employee seeking to challenge the Tax Commissioner's determination may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the 60-day period, the determination becomes final.

013.04 If a petition for redetermination is filed, the Tax Commissioner may not commence collection actions, and must grant the officer or employee a hearing, and give him or her ten days' notice of the time and place of the hearing. The hearing will be conducted as provided in the Practice and Procedure regulations, Chapter 33 of this Title.

013.05 Once an assessment against a corporate officer or employee is final, the taxes will be collected from the corporate officer or employee in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act and Chapter 36 of these regulations.

(Section 77-27,118, R.R.S., 2009, and section 77-2709, R.S. Supp., 2011.\_\_\_\_.)

## **REG-36-014 COLLECTION AGENCIES**

014.01 The Tax Commissioner may contract with any collection agency (agency) licensed pursuant to the Collection Agency Act, within or outside the state, for the collection of delinquent taxes, interest, penalties, and costs.

014.01A Delinquent tax claims may be assigned to the agency, for the purpose of litigation in the agency's name and at the agency's expense, to facilitate or expedite the collection process.

014.01B To be assigned delinquent tax claims, an agency must post a bond not to exceed \$100,000, guaranteeing compliance with the terms of the contract. This bond is in addition to any bond required by Neb. Rev. Stat. § 45-608.

014.01C The terms of the contract with the agency will govern the relationship between the Department and the agency, including the portion of the taxes collected by the agency that will be remitted to the Department, except that the percentage remitted may be no less than 50 percent of the amount collected.

014.02 For purposes of this regulation, delinquent taxes mean any tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment, one of which has been sent by certified or registered mail. The notice sent by certified or registered mail must include a statement that the taxpayer's delinquency may be referred to a collection agency in the taxpayer's home state.

(Sections 77-377.01, 77-377.02, 77-377.03, 77-2710, and 77-27,107, R.R.S., 2009.\_\_\_\_.)

## **REG-36-015 CLAIMS**

015.01 While the estate of a deceased taxpayer is open, the Department will not record a notice of state tax lien or levy against any property of the estate, but may:

015.01A Enter the premises, or a location where the books are maintained, to do an audit or examination after notifying the personal representative that the Department may be auditing or examining records;

015.01B Issue a notice of proposed deficiency determination for any filed or non-filed periods;

015.01C Require the personal representative to prepare tax returns;

015.01D Assess any tax or issue a demand for payment regarding any tax;

015.01E Continue a notice of state tax lien that was recorded prior to the death of the taxpayer;

015.01F Issue a demand for payment to the estate of a responsible corporate officer or employee, or to any other responsible corporate officer or employee, as provided in Reg-36-013.01; or

015.01G Set off a pre-death income tax refund against a pre-death income tax liability.

015.02 To collect delinquent taxes, interest, penalties, and costs from the estate of a deceased taxpayer that arose before death, the Department must file a claim against the estate with the county court or personal representative:

015.02A Within two months after the first published notice of the appointment of a personal representative under Neb. Rev. Stat. § 30-2483; or

015.02B Within three years after death if the Department has not received mailed notice in compliance with Neb. Rev. Stat. §§ 25-520.01 and 30-2483.

015.03 To collect delinquent taxes, interest, penalties, and costs from the estate of a deceased taxpayer that arise after death, the Department must file a claim against the estate with the county court or personal representative within four months after the claim arises, or within three years after death, if the Department has not received mailed notice in compliance with Neb. Rev. Stat. §§ 25-520.01 and 30-2483.

015.04 If the assets of the estate have been distributed, any claims for taxes, interest, penalties, and costs that were not paid by the personal representative, may be collected against the distributees of the estate within the later of three years after the death of the taxpayer or one year

after the assets of the estate have been distributed. These claims are prosecuted in the county court where the estate was administered.

015.05 The priority of claims against the estate will be determined under the provisions of Neb. Rev. Stat. § 30-2487.

015.06 To collect any delinquent taxes, interest, penalties, and costs, the Department may file a claim with the State Treasurer regarding any property of a taxpayer delivered to the state under the Uniform Disposition of Unclaimed Property Act.

015.07 The Department may file claims to collect unpaid taxes, interest, and penalties under any other procedure authorized by law.

(Sections 25-520.01, 30-2483, 30-2494, 30-24,118, and 30-24,120, R.R.S., 2008, sections 69-1318, 69-1318.01, and 69-1320, R. R. S., 2009, and sections 30-2485 and 30-2487, R.S. Supp. 2009.\_\_\_\_\_.)



## **REG-36-016 BANKRUPTCY CLAIMS**

016.01 If a bankruptcy petition is filed concerning any taxpayer, an automatic stay is usually operative and the Department may not act against the property of the bankruptcy estate, property of the debtor, or against a debtor personally to collect a debt; exercise control over, or take possession of property of a bankruptcy estate; or create or enforce a state tax lien. In cases of consecutive bankruptcy filings, the automatic stay may not be operative. During the pendency of a bankruptcy, the Department may:

016.01A Enter the premises or a location where the books are maintained to do an audit or examination after notifying the management, the trustee, and the debtor's bankruptcy attorney that the Department may be auditing or examining records;

016.01B Issue a notice of proposed deficiency determination for any filed or non-filed periods;

016.01C Require tax returns;

016.01D Assess any tax or issue a demand for payment regarding this assessment;

016.01E Continue a notice of state tax lien that was recorded prior to the filing of the bankruptcy petition;

016.01F Issue a demand for payment to a responsible corporate officer or employee as provided in Reg-36-013.01 who is a debtor, subject to exceptions in the demand for payment;

016.01G Set off a pre-bankruptcy petition income tax refund against a pre-bankruptcy petition income tax liability.

016.02 If a bankruptcy petition is filed with regard to any taxpayer, Nebraska Rules of Bankruptcy Procedure require the taxpayer to file any delinquent tax returns that were due prior to the filing of the bankruptcy petition within 30 days after the bankruptcy petition was filed, unless an extension is granted by the Bankruptcy Court.

016.03 The Department must file a claim with the Bankruptcy Court for any taxes reported, but not paid; any taxes that have been assessed and not paid; any taxes currently due; and any interest, penalties, and costs assessed prior to the filing of the petition to share in any dividend from the bankruptcy estate.

016.03A If a notice of state tax lien has been recorded under Reg-36-006 prior to the filing of the bankruptcy petition, the taxes which are the subject of the lien may be a secured obligation with priority as against other creditors based on seniority of the lien.

016.03B If a notice of state tax lien has not been recorded prior to the filing of the bankruptcy petition, taxes are an unsecured debt and may be granted priority as provided in 11 U.S.C. § 507(a)(8).

016.03C A tax obligation that covers a period ending prior to the filing of the bankruptcy petition that becomes due after the bankruptcy petition was filed, is considered to have arisen before the petition was filed.

016.03D The Bankruptcy Court may determine the amount or legality of any tax, interest, penalty, or costs owed by the taxpayer at the time the bankruptcy petition was filed, whether previously assessed or not, or any refund claim asserted by the debtor/taxpayer, unless the tax or refund amount or legality was contested before and determined under Chapter 33 of this Title or by a court of this state on appeal prior to the filing of the bankruptcy petition.

016.04 When the debtor is an individual, liquidation under Chapter 7, or liquidation or confirmation and completion of a plan of reorganization under Chapters 11 or 13, may result in a general discharge of debts. However, this discharge does not discharge any tax obligation or its associated interest, penalties, or costs, or prevent the Department from assessing taxes that became due during the pendency of the bankruptcy if:

016.04A The return is for individual income tax for a taxable year that was last due, including extensions, after the date that is three years prior to the date the bankruptcy petition was filed;

016.04B The tax is for individual income tax that was assessed, and the assessment was final less than 240 days before the date the bankruptcy petition was filed, not counting;

016.04B(1) Any time during which an offer in compromise was pending, plus 30 days, or

016.04B(2) Any time during which a stay against collection was in effect in a prior bankruptcy petition, plus 90 days;

016.04C The tax is a trust fund tax;

016.04D The tax is an excise tax on a transaction occurring before the date of the petition, for which a return, if required, is last due, under applicable law or any extension, after three years before the date of the petition;

016.04E The tax was assessed as a result of a fraudulent return or a willful attempt to evade tax even if the taxes, interest, penalties, or costs arose more than three years prior to the date the bankruptcy petition was filed;

016.04F The tax is a tax for which no return, or equivalent report or notice, was filed; or

016.04G The tax is a tax for which a return was filed within two years before the date the bankruptcy petition was filed.

016.05 If the debtor is not an individual, no claims for taxes, interest, penalties, or costs are discharged under liquidation or confirmation of a plan of reorganization under Chapter 7 or Chapter 11. Only individuals may file under Chapter 13.

016.06 Debtors under Chapter 12 (farm reorganizations) are not discharged of any tax claims listed in subsections 016.04A or 016.04B except for income taxes resulting from capital gains generated from sales of property used to fund and complete a plan of reorganization.

016.07 Property exempted in a bankruptcy remains encumbered to the extent of the value of a state tax lien that was properly filed before the filing of the bankruptcy petition.

(Section 77-27,112, R.R.S., 2009, and sections 11 U.S.C 362(b)(9), 11 U.S.C. 502, 11 U.S.C. 506, 11 U.S.C. 507(a)(8)(A)(i),(ii),(iii),(C),&(E), 11 U.S.C. 522(c)(2)(B), and 11 U.S.C. 523(a)(1))

## **REG-36-017 OFFERS IN COMPROMISE**

017.01 The Department may consider settling a delinquent tax account by means of an offer in compromise for less than the full amount of the liability, if the taxpayer is not disputing the tax, interest, penalties, and costs involved and is not currently in a bankruptcy proceeding. Each offer in compromise for settlement will be considered on its own merits.

017.01A An offer in compromise may be considered in situations where:

017.01A(1) An offer in compromise will resolve the liability, close the account, avoid additional time and expense in collection, or in situations where collection of the account cannot be accomplished by normal collection efforts; or

017.01A(2) The taxpayer does not have, and will not have in the foreseeable future, income, assets, or other means to pay the delinquency.

017.01B Circumstances where an offer in compromise could be considered include, but are not limited to: older unresolved accounts; corporate officer assessments; hardship cases; retired or limited income taxpayers; nonresident taxpayers; and over-assessed or canceled businesses.

(Section 77-2792(3), R.R.S. 2009)